

Re App : Ryan Bechard

Docket: 205066

S.N. : 10/709,693

Group Art Unit: 3749

Filed : 05/24/2004

Examiner: JC Cocks

For : OIL PREHEATER FOR A COMBUSTION SYSTEM

DECLARATION TO TRAVERSE REJECTION OR OBJECTION
(under 37 CFR 1.132)

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Dear Sir:

1. This declaration is submitted in support of the allowance of the foregoing application and traversal to the pending rejection thereof.
2. I, Michael Dunn, make this declaration as a person of skill in the art pertaining to the foregoing application.
3. I have been requested to make this declaration by the applicant to the foregoing application. About two years ago, I discovered Ryan Bechard's product through the internet. I live only 45 minutes west of Bechard. I drove to his place to meet him and to become a dealer of Bechard's product. My opinion to the following is not biased upon knowing Ryan Bechard. I also have not been paid for the following.
4. My understanding and appreciation of the subject matter, industry and invention disclosed in the foregoing application is based on the following and by way of example:

I live in Hudson, WI. I entered into the plumbing and heating service business in 1987 working under my father Bill Schumaker. Dunn Plumbing and Mechanical has been in

business since 2003 serving western Wisconsin and the St. Paul, Minneapolis MN area. I graduated from Wisconsin Indianhead Technical College in 1990. I am currently CEO of Dunn Plumbing and Mechanical and have 5 technicians.

5. I have reviewed the description, drawings and pending claims of the foregoing application.

6. I have particularly reviewed the rejected claims of patent application serial number 10/709,693.

7. I have also reviewed the arguments, comments and objections of the examiner to the foregoing claims found in Office Action Summary to patent application serial number 10/709,693 dated 04/27/2007.

8. I have also reviewed the references cited by the examiner to the foregoing claims which are as follows:

Patents:

9. From my review of US patent to Wilson (5,156,139), I understand the reference teaches and discloses a device that goes inside an oil burner that heats the oil with an electric heater prior to being ejected by a nozzle. How it is ignited isn't shown. Restrictors are inserted into the device to control the oil flow.

10. From my review of US patent to Leach (2,976,918), I understand the reference teaches and discloses, as stated in the patent, fifth paragraph "a preheater system for fuel oil lines wherein the fuel oil supply lines are heated along with the fuel oil return lines". This device heats "fuel oil" lines. This patent clearly states to me that it heats oil in order to get the oil to a burner, not to actually burn it. In of itself, it can't burn oil.

11. From my review of US patent to Bender (5,067,894), I understand the reference teaches and discloses another metal block that uses an electric heater to preheat oil prior to ejection from a nozzle. As Bender states in the fourth paragraph, “the oil burner should be amenable to quick repairs or parts replacement in view of the fact that the waste oil will clog nozzles and the like”, he made his easier to clean out. Waste oil when properly filtered doesn’t clog nozzles. What clogs nozzles is all the sludge created by the electric heater inside the nozzle block. I have seen this cleaning performed by my techs.

12. In contrast to the teachings of the references the pending application discloses an oil burner that uses hot water from the boiler to which it is mounted to preheat the oil. It also shows a complete oil burner, unlike Wilson.

13. Although the examiner argues it would have been obvious to one skilled in the art to modify and adapt the water, oil pre-heater 10 disclosed in US patent no. 2,976,918 to Leach into the device of US patent no. 5,156,139 to Wilson, as one skilled in the art I respectfully disagree for the following reasons: Even though this is the examiner’s “opinion”, in my 20 years of being in the HVAC business, never once have I seen an oil burner that uses hot water to preheat oil. I would not have thought to combine these pieces of equipment because they perform two entirely different roles. Leech has no way of atomizing or igniting oil. In reality, Leech’s equipment is substantially too large to fit onto or in a burner. Leech’s patent is far too complex to put together with Wilson. We install these fuel oil heaters where the oil line enters the building and depending on the installation, at the oil tank. The pump on fuel oil burners is inadequate to pull fuel oil

long distances, especially if it is cold and thick. It is far easier to push oil than it is to pull it with vacuum.

Leech's assembly is just a piping configuration with many off the shelf components, not what I would consider an invention. My techs & I build these assemblies on site using prints that look similar to Leech's patent. Wilson shows an engineered, manufactured and machined device. My techs or I definitely could not build one of these "on site".

Leech's assembly is usually 10-12 inches in diameter and 2-4 feet long which is way too large to fit into any burner housing. It is not logical to attempt shrinking such a large device into the small confinement of a burner.

Leech's invention pertains strictly to transferring "fuel oil" from a cold storage tank to a fuel oil burner. It mentions nothing what so ever about combustion of waste oil. Leech's patent state's specifically that the "fuel oil" is pumped to a burner, in other words, as we have always experienced, there is distance between Leech's "fuel oil" heater and the "fuel oil burner". This is often hundreds of feet of distance in commercial applications. Oil burners cycle on and off. The oil in the piping from Leech's heater to the burner cools in between burn cycles. If an oil burner relied on Leech's heater to heat the oil for combustion, it would not start because the oil in the piping between the burner and Leech's heater would be cooled. **"Fuel oil" does not need to be preheated at or in a "fuel oil burner" to ignite and burn. "Waste oil" must be heated inside the burner at the nozzle to ignite and burn.** Even if waste oil was used with Leech's heater to an oil burner, you still would not have successful combustion because the oil temperature would vary greatly from one installation to another depending on distance between

Leech's heater and the burner. From reading these patents, Leech's patent heats oil for the purpose of pumping and transferring "fuel oil" from cold storage, not burning it. I did not see anywhere in Leach's patent anything about the actual combustion of oil. Wilson and Bender's patent clearly state they are burners for burning "waste oil" not heating oil for the purpose of pumping and transferring oil.

14. In further support of my considered opinion that it would not have been obvious to me to combine the foregoing references as argued by the examiner, I am aware of the following that would not have led me to the conclusions asserted by the examiner.

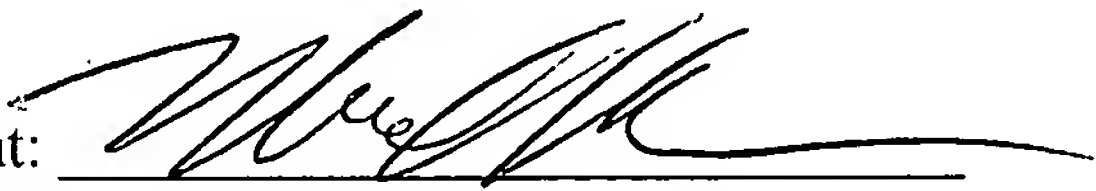
In our HVAC industry, heating appliances must be UL listed or they will be shut down by a building inspector or fire marshal. Also, insurance companies will void a building insurance policy if they find out a "non-listed" heating appliance is being used. Being creative with plumbing is one thing, but creating fire is another. Obtaining a UL listing costs thousands of dollars and takes substantial time. I can't just put a burner together and install it into somebody's building. If my burner burnt somebody's building down, the owner would get nothing from the insurance company and I would get sued. Fear of liability and high cost of UL listing keeps me from even thinking about building a burner or even remotely modifying any burner that is UL listed.

I am greatly impressed with the safety aspect of Bechard's invention. Heating oil with hot water is substantially safer than with electric heaters. Bechard's burner is UL listed and certified safe.

It is of my professional opinion that **it is not obvious to combine the referred patents to derive Bechard's invention.**

15. From the foregoing, it is therefore my opinion that it would not have been obvious to combine the references as argued by the examiner to derive the claimed invention claimed by applicant.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Declarant: 
Michael Dunn
761 Oriole Lane
Hudson, WI 54016

Date October 23, 2007

or

COUNTY OF Riverside)
STATE OF California)

On this 23rd day of October, 2007 before me, a Notary Public for and within the County aforesaid, personally appeared Michael Dunn Name, whom I know to be the person who signed the foregoing affidavit.


Notary Public

Enclosur

